

Pactiv Corporation and Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO-CLC. Cases 9-CA-37226 and 9-CA-37663

April 9, 2001

DECISION AND ORDER

**BY CHAIRMAN TRUESDALE AND MEMBERS
HURTGEN AND WALSH**

On January 18, 2001, Pactiv Corporation (the Respondent), Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO-CLC (the Charging Party or the Union), and the Acting General Counsel of the National Labor Relations Board entered into a settlement stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States court of appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, and the Board's Rules and Regulations,¹ and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The settlement stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D. C., for the entry of a Decision and Order pursuant to the provisions of the settlement stipulation.²

¹ However, the stipulation does not waive Respondent's right to compliance proceedings and related appeals therefrom.

² Contrary to our dissenting colleague, we find it appropriate to approve the settlement without modification. All parties have agreed to it. Further, the settlement properly includes a provision requiring the Respondent to cease and desist from failing to bargain concerning changes in the light duty policy. Although the settlement does not also contain an affirmative provision requiring bargaining before making such changes, and thus does not mirror the standard remedial order that the Board would issue if the Acting General Counsel won the case, we do not find this a sufficient basis to modify or reject the settlement. In this regard, we find *K & W Electric*, 327 NLRB 70 fn. 2 (1998), cited by our dissenting colleague, to be distinguishable. In that case the Board deleted certain language from the stipulated order. However, at the time of the Board's decision, there was a prospect that the language would be declared unlawful on its face. See *Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998). By contrast, our colleague seeks to add language, and there is no suggestion that the order is unlawful without the language. Finally, if, as the dissent suggests, the parties have simply made an "inadvertent error" by failing to conform the stipulated order to the notice (which does include the relevant affirmative language), the parties can ask the Board to correct this error.

Member Walsh notes that there appears to be an inadvertent error in the stipulated Order because, unlike the notice, it fails to provide that the Respondent will notify and, upon request, bargain with the Union before making changes in the light duty policy. In Member Walsh's

On the basis of the settlement stipulation and the entire record, the Board makes the following

FINDINGS OF FACT

1. The Respondent's business

The Respondent is a corporation which maintains an office and place of business in Wurtland, Kentucky, the facility herein involved, where it is engaged in the manufacture of foam packaging materials. The Respondent, in the conduct of its business operations at its Wurtland, Kentucky facility during the 1-year period ending July 31, 2000, purchased and received goods valued in excess of \$50,000 directly from points outside the Commonwealth of Kentucky.

The Respondent admits, and we find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The labor organization involved

At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit

All full-time and regular part-time production and maintenance employees employed by Respondent at its 300 Harris Road, Wurtland, Kentucky facility, but excluding all leased employees, office clerical employees, managerial employees and all professional employees, guards and supervisors, as defined in the Act (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

On December 18, 1998, a majority of the employees in the unit described above designated and selected the Union as their representative for the purposes of collective bargaining with the Respondent. At all times since that date the Union has been the representative of a majority of the employees in the above-mentioned unit and, by virtue of Section 9(a) of the Act, it has been and is now the exclusive representative for the purposes of collective bargaining of all employees in the unit.

ORDER

On the basis of the above findings of fact, the settlement stipulation and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that the Respon-

view, such a bargaining provision is necessary to remedy the specific 8(a)(5) violation alleged. See *Alexander Linn Hospital Assn.*, 244 NLRB 387 fn. 3 (1979), *enfd.* 624 F.2d 1090 (3d Cir. 1980). Member Walsh would modify the Order so that it conforms to the notice and, consistent with the approach used in *K & W Electric*, *supra*, give the parties an opportunity to opt out of the settlement in the event that there is an objection to the modification.

dent, Pactiv Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to provide the information requested in the Union's April 26 and May 15, 2000 letters to Respondent, excluding item #5 in the April 26 letter.

(b) Failing to bargain collectively with the Union as the exclusive representative of the unit concerning changes in the light duty policy.

2. Taking the following affirmative action which the National Labor Relations Board finds will effectuate the policies of the National Labor Relations Act.

(a) Provide the information requested in the Union's April 26 and May 15, 2000 letters to Respondent, excluding item #5 in the April 26 letter.

(b) Restore its light duty policy to permit injured employees to work available light duty assignments.

(c) Make whole unit employees for any loss of pay they may have suffered by reason of not being given light duty work, the precise amounts to be determined via compliance proceedings.

(d) Post at its Wurtland, Kentucky facility copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to bargain with the Union concerning changes in our light duty policy affecting employees in the following bargaining unit.

All full-time and regular part-time production and maintenance employees employed by us at our 300 Harris Road, Wurtland, Kentucky facility, but excluding all leased employees, office clerical employees, managerial employees, and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to provide the information requested by the Union in its April 26 and May 15, 2000 letters to the Employer, excluding item #5 in the April 26 letter.

WE WILL restore the light duty policy to permit injured employees to work available light duty assignments and WE WILL notify and, on request, bargain with the Union before making changes in the light duty policy.

WE WILL make whole unit employees for any loss of pay they may have suffered by reason of not being given light duty work, the precise amounts to be determined via compliance proceedings.

WE WILL provide the information requested in the Union's April 26 and May 15, 2000 letters, excluding item #5 in the April 26 letter.

PACTIV CORPORATION